

REMARKS

In the First Office Action dated December 3, 2004, the Examiner rejects claims 1-8, 26, and 27 under 35 U.S.C. § 102 as clearly anticipated based upon U.S. Patent No. 5,853,100 (hereinafter referred to as Kars). The Examiner supports this rejection with one sentence, "Kars shows all the structure of the device as recited by the claims."

Undersigned Counsel spoke with Examiner Moy on February 13, 2004, regarding clarification of the rejection. However, the Examiner would not clarify the rejection or discuss the application of Kars without a proposed amendment to the claims. Applicant is not prepared to offer any amendments prior to clearly understanding the Examiner's position regarding the rejection based upon Kars.

Therefore, Applicant objects to the current § 102 rejection of claims 1-8, 26, and 27 as lacking completeness and clarity under 37 C.F.R. § 1.104(b). The Examiner's rejection is not informative and does not provide Applicant with any guidance as to the Examiner's application of the Kars patent to the invention as claimed. Particularly, Applicant has failed to identify within Kars a portion of the container wall, not in wedged engagement with the sealing member, that is permitted to bend in response to an external force so as not to deform the portion of the container wall in wedged engagement with the sealing member as recited in claim 1. Absent the Examiner's particularly pointing out such a feature and allowing Applicant to respond on the record, Applicant is unable to directly respond on point to this rejection except to say that Kars fails to disclose at least this element.

In order to promote efficient and effective prosecution, the Examiner must clearly articulate any rejection early in the prosecution process so that the Applicant has an opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity.

Because the current rejection lacks specificity and does not clearly articulate how Kars discloses the invention as claimed, Applicant has not been afforded an opportunity to properly and directly respond on point to the rejection. Therefore, Applicant respectfully requests clarification of the § 102 rejection and respectfully requests that the Examiner identify within the Kars patent where each and every element of the rejected claims is disclosed. Further, because Applicant has not been afforded an opportunity to respond clearly on the record to the present § 102 rejection, Applicant requests that any subsequently issued office action based upon Kars be non-final.

The claims as pending in the present application are provided below with no amendments.

Respectfully submitted,



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